

# EXHIBIT 4

Niemann, Robert

September 14, 2007

Baltimore, MD

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL : MDL NO. 1456  
INDUSTRY AVERAGE WHOLESAL : CIVIL ACTION  
PRICE LITIGATION : 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO :  
U.S. ex rel. Ven-a-Care of : Judge Patti B. Saris  
the Florida Keys, Inc. :  
v. :  
Abbott Laboratories, Inc., : Chief Magistrate  
No. 06-CV-11337-PBS : Judge Marianne B.

- - - - -x Bowler

Baltimore, Maryland  
Friday, September 14, 2007

Videotaped Telephone Deposition of ROBERT NIEMANN

Niemann, Robert

September 14, 2007

Baltimore, MD

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| <p style="text-align: right;">Page 282</p> <p>1 indication, you would agree with me that in December</p> <p>2 of '95, you believed those assertions to be actually</p> <p>3 true, correct?</p> <p>4 A. The fact that the AWP was in excess of</p> <p>5 what was actually paid by providers?</p> <p>6 Q. And that there were numerous accounts of</p> <p>7 prices for drugs charged in the Medicare program in</p> <p>8 excess of the true marketplace?</p> <p>9 A. The IG data. Yes.</p> <p>10 Q. All right. And in the next sentence, the</p> <p>11 document indicates that "the AAC methodology would be</p> <p>12 added in order to obtain the advantage of those</p> <p>13 discounts," correct?</p> <p>14 A. I'm sorry. Where are you, at the bottom</p> <p>15 of the same page?</p> <p>16 Q. Yes, sir.</p> <p>17 A. Can obtain the advantage -- right. Right.</p> <p>18 Q. And in fact, that's why you were proposing</p> <p>19 actual acquisition cost as an alternative -- as the</p> <p>20 alternative methodology, correct?</p> <p>21 A. Yes. It appears to be.</p> <p>22 Q. If you can turn over to the next page.</p>       | <p style="text-align: right;">Page 284</p> <p>1 to an actual acquisition cost, your proposal was that</p> <p>2 the ingredient cost be reduced to actual acquisition</p> <p>3 cost, and a dispensing fee be added in to account for</p> <p>4 the services provided by the supplier, correct?</p> <p>5 A. By the pharmacy. Yes. I mean, I see that</p> <p>6 for pharmacies. I'm not sure about infusion</p> <p>7 suppliers. But I do see that for pharmacies.</p> <p>8 Q. If it were an infusion pharmacy, for</p> <p>9 example. If the enterprise were itself a pharmacy</p> <p>10 providing infusion services, presumably that pharmacy</p> <p>11 would receive that dispensing fee, correct?</p> <p>12 A. I guess so. You're way over my head on</p> <p>13 this. I mean, pharmacies get it. So you know,</p> <p>14 whether you're also an infusion company, I guess you</p> <p>15 would still -- if you're a pharmacy, and you meet all</p> <p>16 the criteria, I guess you'd get it.</p> <p>17 Q. Would you agree with me that that addition</p> <p>18 of a dispensing fee was intended to account for the</p> <p>19 loss of margin to these providers in going from an</p> <p>20 AWP system to an AAC system?</p> <p>21 MS. OBEREMBT: Objection.</p> <p>22 THE WITNESS: Yes. I think that's right.</p> |
| <p style="text-align: right;">Page 283</p> <p>1 Actually, it's a sentence that -- that moves from</p> <p>2 page 3 to page 4. In this proposal, you would</p> <p>3 suggest, am I correct, that pharmacies dispensing a</p> <p>4 drug would be given a dispensing fee in the amount of</p> <p>5 some dollars, not specified in this document,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. Is it your understanding that under the</p> <p>9 methodology -- the rules applicable in 1995,</p> <p>10 pharmacies did not receive a dispensing fee from the</p> <p>11 Medicare program?</p> <p>12 A. That's how I remember it, that they did</p> <p>13 not.</p> <p>14 Q. Because they weren't physicians, correct?</p> <p>15 A. Yes. That's what I remember.</p> <p>16 Q. And so, for example, an infusion pharmacy</p> <p>17 would receive a payment for the drug, but would not</p> <p>18 receive any sort of a payment for the services</p> <p>19 provided in dispensing the drug?</p> <p>20 A. As we covered this morning, yes, I think</p> <p>21 that's how I remember it.</p> <p>22 Q. And in going from average wholesale price</p> | <p style="text-align: right;">Page 285</p> <p>1 BY MR. COOK:</p> <p>2 Q. In the next paragraph, you indicate that</p> <p>3 Medicare currently uses AWP prices to pay for drugs</p> <p>4 That's true, correct? We've gone over that over and</p> <p>5 over.</p> <p>6 A. Yes.</p> <p>7 Q. I'm interested in the second sentence.</p> <p>8 You write, "the AWP is universally recognized as a</p> <p>9 sticker price set by manufacturers."</p> <p>10 I assume you wrote that because you felt</p> <p>11 it to be accurate, correct?</p> <p>12 MS. OBEREMBT: Objection. I don't think</p> <p>13 you've established that he wrote this particular</p> <p>14 paragraph.</p> <p>15 THE WITNESS: That's exactly what I was</p> <p>16 going to say. That's not the kind of sentence I</p> <p>17 would usually write.</p> <p>18 BY MR. COOK:</p> <p>19 Q. That would likely have been written by</p> <p>20 somebody else in your area?</p> <p>21 A. Well, I don't know.</p> <p>22 Q. Well, I'll just ask you, is AWP</p>   |

72 (Pages 282 to 285)